

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #96-06**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

The application of the sales tax to the sale of a [VEHICLE EMERGENCY ROADSIDE ASSISTANCE PLAN].

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the department, and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the commissioner at any time.

Such revocation of modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling and a retroactive revocation of the ruling must inure to his detriment.

FACTS

The taxpayer is a motor vehicle dealer. In conjunction with his sale of motor vehicles he sells memberships in the [VEHICLE EMERGENCY ROADSIDE ASSISTANCE

PLAN]. Attached and incorporated by reference in this ruling request is a copy of the [VEHICLE EMERGENCY ROADSIDE ASSISTANCE PLAN] purchaser application and membership agreement. As provided in the membership agreement, the [VEHICLE EMERGENCY ROADSIDE ASSISTANCE PLAN] provides the following benefits:

A. Emergency Roadside Assistance - Provides the following benefits, subject to a \$50 per occurrence cap: towing of a disabled vehicle, jump start if battery failure occurs, flat tire assistance (installation of spare only), gasoline or other fluid delivery service (does not cover cost of fluid), extrication from snow, mud or sand, lock-out assistance (vehicle entry only). This benefit does not cover cost of parts or repairs except as specifically described.

B. Emergency Travel Expense Reimbursement - In the event of a accidental disabling of a covered vehicle through collision this benefit may provide reimbursement of the costs of transportation, meals, lodging, and rental of an automobile.

C. Ambulance Assistance Reimbursement - Reimbursement of the cost of an ambulance up to \$50.

D. Custom Trip Routing Service - Member can request Trip Routing package. Package will contain routings, information and maps.

E. Legal Defense Reimbursement - Provides limited reimbursement of legal expenses.

F. \$1000 award for information leading to arrest and conviction of anyone stealing member's automobile.

G. Mechanical Breakdown Benefit - This benefit will pay the reasonable cost of repair or reimbursement of the cost of repair by a qualified repair facility, less a deductible. The standard plan covers the engine, transmission, front wheel drive, drive axle, radiator fan motor, front suspension, steering, fuel pump, air conditioner, brakes, and some specifically listed electrical components. This benefit is administered by the [NAME OF COMPANY].

QUESTION

Whether the sale of the [VEHICLE EMERGENCY ROADSIDE ASSISTANCE PLAN] is subject to sales tax.

RULING

The sale of the [VEHICLE EMERGENCY ROADSIDE ASSISTANCE PLAN] is subject to sales tax.

ANALYSIS

T.C.A. Section 67-6-205 imposes "a tax at the rate of six percent (6%) of the gross charge for all services taxable under this chapter."

T.C.A. Section 67-6-102 defines the terms "retail sale," "sale at retail" and "retail sales price" include the following:

- (ix) Charges for warranty or service contracts warranting the repair or maintenance of tangible personal property; provided, that any repairs to the extent covered by the contract shall not also be subject to tax;

Under the provisions of the membership agreement, the Mechanical Breakdown Benefit is clearly a warranty or service contract warranting the repair or maintenance of the member's automobile. Therefore the charge for the membership agreement will be subject to sales tax. Although the agreement as a whole includes certain benefits which are not sales taxable services, the agreement does not separate charges for taxable services from charges for nontaxable services. The entire charge is therefore subject to sales tax. It should be noted that in the context of the agreement, the Mechanical Breakdown Benefit appears to be the principal benefit conferred by the purchase of a membership in the [VEHICLE EMERGENCY ROADSIDE ASSISTANCE PLAN].

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APPROVED: Ruth E. Johnson

DATE: 2-5-96